NG CHIK PUAH v. CHOP HOE THONG

[O. C. J. (Tan Ah Tah J.) March 12, 1962]

[Singapore — Suit No. 702 of 1956]

Landlord and Tenant — Control of Rent Ordinance, (Cap. 242), s.15(1), paragraph (j) — Recovery of possession — Hardship — Comparative hardship.

Control of Rent Ordinance, (Cap. 242), ss.7(1)(c) and 7(2) — Increase of rent without first determining the tenancy — Whether waiver and acquiescence a defence.

The plaintiff claimed possession of the premises known as No. 55 Church Street in respect of which the plaintiff is the landlord and the defendants, the tenants. In making this claim the plaintiff relied on paragraph (j) of section 15(1) of the Control of Rent Ordinance, (Cap. 242). The standard rent of the premises at 1st August, 1939 was $65 per month. The rent was increased on three different occasions without determining the tenancy as required by section 7(2) of the Ordinance. The defendants filed a counterclaim in which they sought to recover from the plaintiff the sum of $2,158 (amended to $2,125.50 at the hearing) which they alleged they had paid in excess of the rent lawfully receivable by the plaintiff. It was because of the amount of the counterclaim that these proceedings, which commenced in the District Court, were transferred to the High Court.

Held: (1) under section 15(1)(j) the onus is on the plaintiff to prove that the premises were reasonably required for occupation by himself or any member of his family. If this onus is discharged by the plaintiff, then the burden is upon the defendants to prove that, having regard to all the circumstances of the case, including the question whether other accommodation is available for the plaintiff or for the defendants, greater hardship will be caused by granting an order for possession than by refusing to grant it. Having considered all the circumstances of this case, including the question whether other accommodation is available for the plaintiff or for the defendants, the defendants have discharged the onus which lies on them and that greater hardship will be caused by granting an order for possession than by refusing to grant it;

(2) the provisions of section 7(2) of the Ordinance make it clear that a landlord is not relieved from the necessity of determining the tenancy according to law prior to increasing the rent.

SUIT

R. C. H. Lim for the plaintiff.

R. L. Eber for the defendants.

Cur. Adv. Vult.

Tan Ah Tah J.: In this case the plaintiff claims possession of the premises known as No. 55 Church Street in respect of which the plaintiff is the landlord and the defendants are the tenants. In making this claim the plaintiff relies on paragraph (j) of section 15(1) of the Control of Rent Ordinance. The defendants have filed a counterclaim in which they seek to recover from the plaintiff the sum of $2,158.00 (amended to $2,125.50 at the hearing) which they allege they have paid in excess of the rent lawfully receivable by the plaintiff. It was because of the amount of the counterclaim that these proceedings, which commenced in the District Court, were transferred to this court.

The onus is upon the plaintiff to prove that the premises are reasonably required for occupation by himself or any member of his family. If this onus is discharged by the plaintiff, then the burden is upon the defendants to prove that, having regard to all the circumstances of the case, including the question whether other accommodation is available for the plaintiff or for the defendants, greater hardship will be caused by granting an order of possession than by refusing to grant it.

At the date of the hearing of this case the plaintiff had become a partner in a firm carrying on the business of importers and exporters under the style of Chip Hock & Co. at No. 2 Guthrie Lane. There were three other partners of whom two were his sons and one was his brother. The firm dealt in salt fish, coffee, pepper and other commodities, the main item being salt fish.

The plaintiff's firm had previously occupied No. 21 Synagogue Street, having rented these premises in 1943. In September, 1955, the plaintiff's firm had to give up No. 21 Synagogue Street to the Singapore Improvement Trust and it was then that the firm moved to its premises at No. 2 Guthrie Lane. The plaintiff's complaint is that the space available at No. 2 Guthrie Lane is much smaller than the space previously available at No. 21 Synagogue Street and that as a result the volume of his firm's salt fish business has decreased and his firm is not dealing in any other goods. His three houses which are situated in a lane off Cheang Wan Seng Place are already occupied by tenants, and moreover, due partly to their situation, are not suitable as business premises.

Having regard to the circumstances in which the plaintiff is placed, I find that he has established that the premises known as No. 55 Church Street are reasonably required for occupation by himself.

The next matter to be considered is the question of hardship. The defendants became tenants of No. 55 Church Street in or about the year 1930. There they carried on the business of commission agents dealing in rubber which was consigned to them for sale. Sales of the rubber were made by tender and before the tenders were submitted it was usual for the prospective buyers and brokers to inspect the rubber at the defendants' premises. Samples of each consignment of rubber had to be displayed in large quantities for inspection. A good deal of space was occupied in the defendants' premises at No. 55 Church Street for this purpose. The foregoing facts were established by the evidence as was also the fact that Church Street is in the centre of the rubber tender business which is confined to a limited area of the city of Singapore.

It was contended by counsel for the plaintiff that six other premises were available to the defendants as alternative accommodation. Of these six premises three are known as Nos. 100, 102 and 112 Chin Swee Road. Evidence was given by an officer of the City Fire Brigade to the effect that they were unsuitable for storage of rubber. He stated that he did not wish to see rubber stored in Chin Swee Road at all as the

fire risk was very high indeed. He went so far as to say that even if the three premises were rebuilt it would still be undesirable to issue a licence for the storage of rubber in them. Having regard to his views on the matter it is plain that these three premises are not suitable as alternative accommodation.

As to the two other premises known as No. 5 Martin Road and No. 72 Mohamed Sultan Road, it is clear from the evidence that they are much too far away from the area of the city where the rubber tender business is carried on, and that the defendants' business would be severely and adversely affected if they were to move to those premises.

The last of the six premises referred to by counsel for the plaintiff is known as No. 38 Teluk Ayer Street. The evidence shows that the ground floor and first floor of these premises are already fully occupied for business purposes, while the second floor is used as a residence by the defendants' employees. It was suggested by counsel for the plaintiff that the employees should be sent to live elsewhere so that the second floor could be used as an office. However, there are about twenty employees altogether and it would be difficult to find other premises in which to house them. Further, as the defendants' managing partner in effect stated, it is usual among Chinese businesses for the employees to stay on the premises, where they are entitled to free board and lodging. In the case of the defendants' business there was work to be done on board ship during the night and the employees were required to be available at short notice.

Since the receipt by the defendants of the notice to quit dated 1st February, 1955, the defendants have made attempts to find alternative accommodation. The defendants' managing partner made enquiries at two firms of auctioneers regarding properties for sale. Eventually he purchased No. 41 Church Street and subsequently gave the tenant who was in occupation notice to quit. Counsel for the plaintiff has suggested that he should have paid compensation to the tenant in order to obtain vacant possession. In my view, the defendants were not obliged to go to those lengths in the case of any of the premises referred to in the evidence in order to find alternative accommodation.

In a case like this I have to balance the hardships suffered by the plaintiff by not being able to use premises No. 55 Church Street and the hardships which the defendants will suffer if they are deprived of the use of the premises. Having considered all the circumstances of the case, including the question whether other accommodation is available for the plaintiff or for the defendants, I am satisfied that the defendants have discharged the onus which lies on them and that greater hardship will be caused by granting an order for possession than by refusing to grant it. As to the claim for possession, there must therefore be judgment for the defendants.

I now turn to deal with the counterclaim. The amended defence to the counterclaim contained a plea under the Limitation Ordinance (Cap. 7) but this plea was abandoned by counsel for the plaintiff during the hearing.

It was common ground that the standard rent of the premises as at 1st August 1939 was $65 per month. According to the evidence the previous owner of the premises, purporting to act under section 7(1)(c) of the Control of Rent Ordinance, increased the rent by 25% from $65 per month to $81.25 per month about a year before the 27th August 1948, on which date the plaintiff purchased the premises. In order to make this a lawful increase, the previous owner should have given the defendants notice determining the tenancy, and created a new tenancy at the increased rental. The provisions of section 7(2) of the Ordinance make it clear that a landlord is not relieved from the necessity of determining the tenancy according to law prior to increasing the rent. The defendants' managing partner's evidence, which I accepted, is to the effect that no notice to quit either verbal or written, apart from the notice to quit dated 1st February 1955, was received by the defendants during the whole of their tenancy of No. 55 Church Street. I am satisfied that the tenancy was not determined according to law prior to the increase of the rent from $65 per month to $81.25 per month and that therefore such increase was not lawful. Counsel for the plaintiff said that he relied on waiver and acquiescence. The defendants' managing partner had been advised by his solicitor that the increase was not lawful but he was not prepared to contest the matter in court. In this connection it is relevant to refer to the provisions of paragraph (b) of section 4 of the Control of Rent Ordinance No. 16 of 1948 which reads as follows:—

> "(b) any agreement made by the tenant with his landlord under or by virtue of which an increased rent is payable by the tenant in contravention of the provisions of the Ordinance shall be null and void and of no effect."

It is also to be observed that it is provided by section 3(4) of the Control of Rent Ordinances No. 25 of 1947 and No. 22 of 1953 that a tenant who has paid his landlord a sum in excess of the rent which may lawfully be received may recover such sum from the landlord. In my opinion the plaintiff cannot rely on waiver or acquiescence in this case. When he began to receive $81.25 per month from the defendants after he had purchased the premises he was receiving more than he could lawfully receive.

The next increase took place in March 1952 when the rent was further increased from $81.25 per month to $90 per month. Although this increase was said to be on account of the installation of modern sanitation in the premises, no application was made to the Rent Conciliation

Board for an increase. Nor was there any evidence that the tenancy was determined before the rent was increased. It was admitted by counsel for the plaintiff that this increase was not lawful.

In December 1953 the rent was still further increased by 10% from $90 per month to $99 per month, owing it was alleged, to an increase in the rates payable by the plaintiff. In thus increasing the rent it is obvious that the plaintiff took into account the two previous increases which brought the rent up to $90 per month. It follows that the rent could not be lawfully increased any further without the approval of the Rent Conciliation Board under the proviso to section 7(1)(e) of the Control of Rent Ordinance. Further, there was no evidence that the tenancy was determined before the rent was increased. It is plain that all the three increases in the rent were not lawful. The defendants therefore succeed in their counterclaim and there will be judgment for the defendants for the sum of $2,125.50.

The plaintiff will pay the defendants' costs of the claim and counterclaim on the High Court scale.

Suit dismissed. Judgment for defendant on counterclaim.

Solicitors: *R. C. H. Lim & Co.; Eber & Tan.*

LEE YONG WU v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) April 28, 1962]

[Muar — Criminal Appeal No. 5 of 1962]

Gaming — Assisting in carrying on public lottery — Modus operandi of Tikam Ekor Lottery — Expert evidence — Common Gaming Houses Ordinance, 1953, ss.4, 16, 18, 24.

Evidence Ordinance, 1950, s.114(e) — Presumption of due performance of official acts.

Sentence — When sentence of imprisonment should be imposed instead of fine.

The appellant was charged under section 4(1) of the Common Gaming Houses Ordinance, and sentenced to 6 months' imprisonment. It was contended on appeal that: (a) there was no evidence that the search warrant was issued in accordance with the provisions of section 16, and (b) the Magistrate did not himself look at the exhibits to make up his own mind as to whether the explanation of the expert as to their nature was reasonable and acceptable.

Held: (1) A.S.P. Lim's evidence showed that he issued the warrant under section 16(1), and it was eminently reasonable to presume that being a responsible officer he had due regard to all provisions of the law because not only did he depose that he issued the search warrant on information on oath, but he took steps to satisfy himself that the information was true;

(2) the normal procedure in any Court is for the exhibit to be proved, for the Judge to look at it and then to make up his mind concerning its relevance. There is nothing to suggest that the learned President who has had plenty of experience did not do so.

Cases referred to:—

(1) *Ong Yap Chang* v. *Public Prosecutor* [1962] M.L.J. 46 at p. 47.

(2) *Abdul Kareem* v. *R.* [1957] M.L.J. 185 at p. 188.

(3) *Re Lim Kwang Teik & Ors.* [1954] M.L.J. 159.

MAGISTRATE'S CRIMINAL APPEAL.

W. H. Sault for the appellant.

Hamzah bin Abu Samah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Adams J.: The appellant in this case was charged before the learned President of the Sessions Court sitting as Magistrate at Muar with the offence of assisting in the carrying on of a public lottery contrary to section 4(1) of the Common Gaming Houses Ordinance No. 26 of 1953. He was found guilty and sentenced to six months imprisonment.

The learned President found that the police, in pursuance to a search warrant issued under the provisions of section 16 of the Ordinance an unnumbered house in Jalan Mahmood, Parit Jawa New Village, was raided. During the raid the appellant was seen to get up from a table on which various exhibits were later found and make a bolt for it throwing away further exhibits as he went. Inspector Tharunalinggam gave evidence as an expert on the *modus operandi* of the *Tikam Ekor* Lottery and deposed that the exhibits produced to the Court were record of stakes of tickets of various denominations in the *Tikam Ekor* Lottery. He calculated the value of the tickets found in the record of stakes in the possession of the accused as $4,900. Inspector Tharunalinggam explained how he came by his opinions and pointed out the similarity and dissimilarity to the exhibits produced in the case to those shown in *Gambling Games in Malaya* by Dobree which is a statutory authority under section 24(2) of the Common Gaming Houses Ordinance.

Mr. Sault who appeared for the appellant, did not really attack the findings of fact of the learned President and argued the appeal on two points of law. It will be easier if I deal with his second point first. In his very full and careful grounds the learned President makes certain findings of fact against the appellant and one of these was that the exhibits were records of stakes in the 10,000 character lottery; and he says:

> "I found as a fact that the exhibits were records of stakes in 10,000 character lottery because from the evidence of this expert it was clear that the reasons that he gave for saying so were clear and unequivocal and no one could quarrel with him. The exhibits were identical to those used in other cases relating to the carrying on of 10,000 character lottery that have been previously produced before the Courts in North Johore and this confirmed me in my opinion that the evidence of the expert was reliable."

The first part of this is taken from a judgment of mine in *Ong Yap Chang* v. *Public Prosecutor*[1]. In my opinion this extract presupposes that the Magistrate has looked at the exhibits. The normal procedure in any Court is for the exhibit to be proved, for the Judge to look at it, and then to make up his mind concerning its relevance. There is nothing to suggest that the learned President who has had plenty of experience did not also do so. He could not have written that he found the exhibits to be what